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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

MMB Docket No. 1007-0564

Emerson Docket No. M-7371

Confirmation No. 6235

Application of: Astrauskas et al.

Group Art Unit: 2838

Serial No. 10/628,700

Examiner: Edward H. Tso

Filing Date: July 28, 2003

For: **Method and Apparatus for Conserving Battery for Operation of a Low Intensity Optical Communication Probe**

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Mail Stop - AF, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on

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**NOTICE OF APPEAL FROM THE PRIMARY EXAMINER TO THE BOARD OF PATENT APPEALS AND INTERFERENCES**

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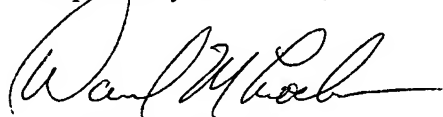
Sir:

Applicants hereby appeal to the Board of Patent Appeals and Interferences from the decision set forth in the Office Action mailed on December 12, 2006. Although the decision was not a final action, the Office Action was issued in response to Applicants'

appeal brief that had been filed on September 21, 2006. Thus, the Office Action mailed on December 12, 2006 was an attempt by the Examiner to reopen prosecution on the merits with regard to claims 1-2, 4-6, 8-13, and 16-20. The Examiner has rejected these claims under 35 U.S.C. 103(a) as being unpatentable over Bauer and unsubstantiated obvious teachings and motivations. As the claims were finally rejected in a prior office action and were on appeal at the time that the Examiner re-opened prosecution, Applicants may elect to continue the appeal by filing another Notice of Appeal and Appeal Brief. *37 C.F.R. 41.31 and 41.37.*

No fee check is being tendered with this Notice of Appeal as a check in the amount of \$500.00 has already been paid for the previously filed Notice of Appeal. Should the previously paid fee be deficient in amount or any extension of time be necessary for the filing of this Notice of Appeal, please charge any fees which may be due to Deposit Account No. 13-0014, but not to include any payment of issue fees.

Respectfully submitted,



David M. Lockman  
Attorney for Applicants  
Registration No. 34, 214

March 9, 2007  
Maginot, Moore & Beck LLP  
Chase Tower  
111 Monument Circle, Suite 3250  
Indianapolis, Indiana 46204-5109  
(317) 638-2922 telephone  
(317) 638-2139 facsimile